

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VIRNETX, INC.

Plaintiff

vs.

MICROSOFT CORPORATION

Defendant

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**CASE NO. 6:07 CV 80
PATENT CASE**

ORDER

As stated at the pretrial hearing on February 18, 2010, the Court **DENIES** VirnetX's Motion to Strike Portions of Dr. Stephen Wicker's Expert Reports and to Exclude Related Testimony at Trial (Docket No. 254) and **DENIES** Microsoft's Motion to Strike and *Daubert* Motion to Preclude Testimony by Dr. Mark Jones Regarding Opinions as to Microsoft's Alleged State of Mind Underlying Allegations of Indirect Infringement (Docket No. 255). The Court **GRANTS** Microsoft's Motion to Strike and *Daubert* Motion to Preclude Brett L. Reed's Expert Testimony Regarding Non-Comparable Agreements and Alleged Microsoft Search Practices (Docket No. 261) as to Microsoft's Settlement Agreement with z4 and **DENIES** the motion as to the MCPP and WSPP Licensing Programs, MPEG and Dolby License Agreements, SafeCast Agreement, Microsoft Interoperability Agreements, Third-Party Licenses, and Microsoft's Patent Review Practices. The Court further **DENIES** VirnetX's Motion for Partial Summary Judgment that the '180 Patent is Non-Obvious in Light of the Combination of IPSEC and DNSSEC (Docket No. 253). Finally, the Court **GRANTS** VirnetX Inc.'s Motions in Limine (Docket No. 310) as to matters 2, 8–10, and 17,

GRANTS Microsoft's Omnibus Motions in Limine and to Exclude (Docket No. 305) as to matters 2, 4, 13, and 15, and **DENIES** Microsoft's Omnibus Motions in Limine and to Exclude as to matter 7.

The Court further **DENIES** Microsoft's Motion for Clarification and to Amend Appendix B to Claim Construction Opinion (Docket No. 247), **DENIES** Microsoft's Motion to Strike and *Daubert* Motion to Preclude Brett L. Reed's Expert Testimony Regarding Damages and Motion for Partial Summary Judgment Against Use of the Entire Market Value of the Accused Software to Support VirnetX's Damages Claim (Docket No. 256), and **DENIES** Microsoft's Motion for Partial Summary Judgment on VirnetX's Willfulness Allegations (Docket No. 257).

The Court **CARRIES** the unresolved matters in VirnetX Inc.'s Motions in Limine (Docket No. 310) and the unresolved matters in Microsoft's Omnibus Motions in Limine and to Exclude (Docket No. 305). The Court **ORDERS** the parties to meet and confer on all unresolved motions in limine and notify the Court of any issues that need to be resolved by February 25, 2009. If the parties cannot resolve all the issues, the Court will hear them before jury selection on March 1, 2010.

The Court **ORDERS** the parties to meet and confer on proposed Findings of Fact and Conclusions of Law and a list of Bench-trial issues (in question form, much like a verdict form) and submit them to the Court by March 3, 2010. The Court further **ORDERS** the parties to meet and confer on the Court's Charge and submit a proposed Charge to the Court by February 25, 2010. The parties shall file the proposed Findings of Fact and Conclusions of Law, list of Bench-trial issues, and proposed Charge and shall email them in WordPerfect to Kat_Li@txed.uscourts.gov.

Finally, the Court will allow the parties 30 minutes for voir dire, 45 minutes for opening statements, 12 hours for direct and cross examinations, and 60 minutes for closing arguments. The 12 hours includes issues that are tried to the Bench.

So ORDERED and SIGNED this 24th day of February, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**